



October 7, 2019

Via Email Only:

Taylor Amarel
MuckRock News
c/o Muckrock News Dept MR 79241
411A Highland Ave
Somerville, MA 02144
79241-33711682@requests.muckrock.com

Via Email Only:

Marc Eisenstein
Agency Open Records Officer
Pennsylvania Office of the Governor
225 Main Capitol
Harrisburg, PA 17120
RA-GOVRTKL@pa.gov

RE: OFFICIAL NOTICE OF APPEAL-DOCKET #AP 2019-1796

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, *et seq.* on **October 7, 2019**. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days. The OOR's Final Determination is currently due on **November 6, 2019**.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. The Parties agreement to mediate stays the Final Determination Deadline. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination, unless the Requester agreed to an additional 30 calendar day extension on the appeal form.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency's position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR's website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by 11:59:59 p.m. on **October 17, 2019**. The record closing date is seven (7) business days from the date of this letter unless the proceedings have been stayed for

the parties to submit a completed mediation agreement form, then the record will remain open for seven (7) additional business days beyond the mediation agreement submission deadline. *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the above docket number on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

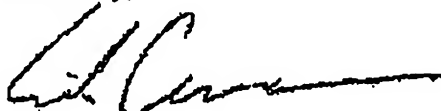
Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

Public Record Notice: All dockets, filings and OOR orders and opinions in this appeal will be public records and subject to public access with limited exception. The OOR’s Final Determination will generally include a summary of the case including the identity of the parties and the relevant factual background. Final Determinations are available on the OOR’s website and searchable on-line.

If you have general questions about the appeal process, please contact the OOR at (717) 346-9903. If you have questions specific to your appeal, please email the assigned Appeals Officer (contact information is enclosed) - and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Jill Wolfe, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

EMAIL:

jiwolfe@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer. Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

MuckRock News
DEPT MR 79241
411A Highland Ave
Somerville, MA 02144-2516
79241-33711682@requests.muckrock.com

RTK APPEAL

RECEIVED

OCT 07 2019

OFFICE OF OPEN RECORDS

Executive Director, Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17126-0333

October 3, 2019

This is a follow up to a previous request:

I wish to appeal this response. According to standard practice and court precedent, it is not allowable for a government department to deny access to all documents using a "scorched earth" policy. Instead, the documents should be redacted in part, highlighting the applicable redaction for each piece of content that is redacted.

The dates, times, and meta data of the emails certainly do not contain information that can be withheld. Furthermore, email greetings, signatures, and other text are not subject to redactions.

Therefore, I respectfully request this request be reviewed and all responsive information be released with partial redactions. Furthermore, I would like to know how many documents/pages have been withheld.

Filed via MuckRock.com
E-mail (Preferred): 79241-33711682@requests.muckrock.com

For mailed responses, please address (see note):

MuckRock News
DEPT MR 79241
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Sept. 30, 2019:
Subject: Final Response-Right-to-Know Request (C-2019-040)
Dear Mr. Amarel:

Attached please find the final response from the Office of the Governor to your Right-To-Know request of August 23, 2019.

Sincerely,

MuckRock News
DEPT MR 79241
411A Highland Ave
Somerville, MA 02144-2516
79241-33711682@requests.muckrock.com

Marc Eisenstein
Agency Open Records Officer

On Aug. 30, 2019:
Subject: Interim Response-Right-to-Know Request (C-2019-040)
Dear Mr. Amarel:

Attached please find the interim response from the Office of the Governor to your Right-To-Know request of August 23, 2019.

Sincerely,

Marc Eisenstein
Agency Open Records Officer

On Aug. 23, 2019:
Subject: Pennsylvania Right to Know Act Request: Tom Wolf Emails
To Whom It May Concern:

Pursuant to the Pennsylvania Right to Know Act, I hereby request the following records:

I would like to obtain all emails sent to, from, or copied to Gov. Tom Wolf from June 1, 2019 to Present Day containing any of the following non-case-sensitive key-strings: "Department of Human Services", "Berks County Residential Center", "Detention", "Health and Human Services", "Homeland Security", "DePasquale", "Leinbach", or "Erin James".

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

Taylor Amarel

Filed via MuckRock.com

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E-mail (Preferred): 79241-33711682@requests.muckrock.com

For mailed responses, please address (see note):

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

September 30, 2019

Via Electronic Transmission to (79241-33711682@requests.muckrock.com)

Taylor Amarel
c/o MuckRock News
DEPT MR 79241
411A Highland Ave
Somerville, PA 02144-2516

**Re: Right-to-Know Law Request - dated August 23, 2019
Internal No. C-2019-040**

Dear Mr. Amarel:

On August 23, 2019, the Office of the Governor (Office) received your request for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. §§ 67.101, et seq. (RTKL), wherein you requested:

"all emails sent to, from, or copied to Gov. Tom Wolf from June 1, 2019 to Present Day containing any of the following non-case-sensitive key-strings: "Department of Human Services", "Berks County Residential Center", "Detention", "Health and Human Services", "Homeland Security", "DePasquale", "Leinbach", or "Erin James"."

By letter dated August 30, 2019, this Office informed you that it would require an extension of time, until no later than September 30, 2019, to review your request.

After review, your request is denied because any responsive records reflect the internal, predecisional deliberations of agency personnel and documents used in such deliberations. 65 P.S. § 67.708(b)(10).

Nevertheless, you have the right to appeal this response to the Office of Open Records. If you choose to file an appeal, you must do so in writing and within 15 business days of the mailing date of this response and simultaneously send a copy of the appeal to me in the same manner as the appeal is sent to the Office of Open Records (i.e., e-mail, fax, and regular U.S. mail or hand delivery.) Please direct your appeal to the Executive Director, Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. If you choose to file an appeal, you must include the following:

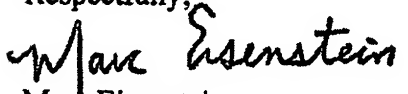
- (1) a copy of your request;

- (2) a copy of this response; and
- (3) the reason(s) in support of your appeal and/or why you believe the agency is in possession of records, or unable to meet any of the exemptions as stated in this response.

For your convenience, the Office of Open Records has an appeal form available on its website at: http://www.openrecords.pa.gov/Documents/Appeals/Appeal_Form.pdf.

Thank you for your patience as we processed your request. Should you have any questions or require any further assistance, please do not hesitate to contact me *via* e-mail at RA-GOVRTKL@pa.gov

Respectfully,


Marc Eisenstein
Agency Open Records Officer